

Canada Industrial Relations Board



Conseil canadien des relations industrielles

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Reasons for Decision

Quebec Ports Terminals Inc.,

applicant,

and

Maritime Employers Association,

respondent,

and

Syndicat des débardeurs de Trois-Rivières
(CUPE 1375),

bargaining agent.

Board File: 28514-C

Neutral Citation: 2011 CIRB 580

April 20, 2011

A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members, considered the above-noted matter.

Section 16.1 of the *Canada Labour Code (Part I – Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Furthermore, the Board is not required to notify the parties of its intention not to hold a hearing (see *NAV CANADA*, 2000 CIRB 468, affirmed in *NAV Canada v. International Brotherhood of Electrical Workers*, 2001 FCA

30; and also *Raymond v. Canadian Union of Postal Workers*, 2003 FCA 418). Having reviewed the parties' submissions and the documents in support of their respective positions, the Board is satisfied that the documentation on file is sufficient for it to decide the matter without an oral hearing.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I—Nature of the Application

[1] On December 23, 2010, Quebec Ports Terminals Inc. (QPT) filed an application for an interim order under section 19.1 of the *Code*. QPT also filed a complaint under sections 34(6) and 97(1)(a) of the *Code* on December 20, 2010 (Board file no. 28505-C), against the Maritime Employers Association (the MEA or the employer association) and Mr. Serge Brault, in his capacity as grievance arbitrator. This panel of the Board has decided to hold an oral hearing in respect of the latter matter.

[2] Accordingly, this decision relates solely to the application for an interim order filed under section 19.1 of the *Code*.

[3] In its application for an interim order, QPT asked the Board “to issue an interim order to suspend the application of the decision of November 30, 2010, by Arbitrator Brault until such time as a ruling is made on the application filed under sections 34(6) and 97(1)(a) of the *Canada Labour Code*” (translation).

II—Background and Facts

[4] It is useful to begin by noting that, on June 11, 2010, the Board rendered a decision in *Quebec Port Terminals Inc.*, 2010 CIRB LD 2368, regarding a complaint of unfair labour practice filed by QPT under section 97(1) of the *Code*, in which it alleged that the MEA violated section 34(6) of the *Code*. In the alternative, QPT had also applied for an interim order under section 19.1 of the *Code*. The said complaint and application for an interim order both related to the arbitration of a grievance

(grievance no. D-2008-22), in which the Syndicat des débardeurs de Trois-Rivières (CUPE 1375) (the union) alleged that QPT, a member of the MEA, had breached the collective agreement by giving checking work to non-unionized workers in the Port of Bécancour.

[5] In that case, the union argued that the work done by QPT employees was covered by its bargaining certificate. The MEA chose not to represent QPT in the grievance procedure, since it had not received the information it had requested. QPT, for its part, faulted the MEA with forcing it to act in the grievance file even though it had no mandate in this regard, preventing it from conducting a serious investigation and having more or less abdicated its responsibilities, contrary to its duty of representation under the *Code*.

[6] The Board dismissed the complaint and the application for an interim order, stating the following regarding the application for an interim order:

In addition to the facts described above, the Board must consider the decisions made by the grievance arbitrator and the Superior Court. On April 13, 2010, the grievance arbitrator rejected QPT's request for intervenor status and decided to proceed with examining the grievance on the merits with the MEA and the union. The Board also takes note of the Superior Court's recent judgment rendered from the bench on April 16, 2010, dismissing the stay order application of the hearing of the grievance before the arbitrator.

The Board is of the opinion that, in light of the Superior Court's decision to refuse a stay of the hearing before the grievance arbitrator, this application for an interim order is moot.

For the above-stated reasons, the Board dismisses the application for an interim order.

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[7] The facts in the matter now before the Board show that the grievance arbitration (file no. D-2008-22) finally proceeded and the first day of hearing took place on April 16, 2010, before Arbitrator Serge Brault. The second day of hearing was scheduled for October 26, 2010, but following legal advice from its counsel, the MEA decided to settle the grievance amicably on October 22, 2010.

[8] The facts also show that, on November 30, 2010, Arbitrator Serge Brault acknowledged the arrangement agreed upon by the MEA and the union in relation to the said grievance.

[9] On December 20, 2010, QPT filed an unfair labour practice complaint under sections 34(6) and 97(1) of the *Code*, in relation to which the Board will be holding a hearing. On **December 23, 2010**, it filed an application for an interim order, as alternate relief. In its unfair labour practice complaint, QPT alleged among other things that the agreement between the MEA and the union in relation to grievance no. D-2088-22 would deprive it of its management right and bring its business's operations to a standstill. QPT argued that the MEA had arrived at a settlement without any real proof. Furthermore, the union and the MEA had agreed to ask Mr. Serge Brault to endorse the decision, reproducing the agreement *in extenso* so that it might serve as a precedent in the future. QPT maintained that, in doing so, the MEA and the union had been asking Arbitrator Brault to rule on issues not even before him and over which he had no jurisdiction. QPT argued that the issues upon which the MEA and the union had reached agreement were not covered by the collective agreement and, consequently, it was being deprived of basic management rights because of a contractual agreement signed without its knowledge.

[10] It should be noted that, on December 20, 2010, prior to filing the application for an interim order now before the Board, QPT applied to the Superior Court of Quebec for judicial review of Arbitrator Serge Brault's decision as well as a stay order. QPT was seeking an order staying the execution of the decision issued on November 30, 2010, by Mr. Serge Brault in his capacity as grievance arbitrator—in other words, exactly what the QPT is seeking from the Board in the instant matter. In the case before the Superior Court, the MEA filed an affidavit by Mr. Jean-Pierre Langlois, its senior labour relations advisor, against the application for a stay order. QPT referred to this affidavit in support of its application to the Board for an interim order to justify a stay of the arbitrator's decision, given certain ambiguous points resulting in different interpretations of the collective agreement.

[11] On December 23, 2010, Mr. Justice Michel Delorme of the Superior Court rendered a decision from the bench dismissing the application for a stay on the basis in particular that QPT had not met "its burden of proving the existence of... serious and irreparable harm should the stay not be granted" and that "the balance of convenience" (translations) favoured the MEA and union. The reasons for decision were set out in *Terminaux portuaires du Québec c. Brault*, 2010 QCCS 6635, dated January 19, 2011.

[12] In view of the above, the MEA contended that the principle of *res judicata* applied to the application before the Board, basing its argument on the judgment of Mr. Justice Delorme in *Terminaux portuaires du Québec c. Brault*, *supra*, in which he dismissed the application for a stay. The MEA referred to doctrine and case law in support of its arguments in this regard. In the alternative, the MEA submitted that the criteria for allowing an application for an interim order under section 19.1 of the *Code* were not met, given that QPT had not proven the existence of serious or irreparable harm and the balance of convenience was in its favour.

[13] The union, for its part, submitted that the Superior Court of Quebec had had the opportunity to consider the grounds cited by QPT in its application for a stay—which were the same grounds as those cited in the application before the Board. It pointed out that a stay of the execution of Arbitrator Brault's arbitral award as requested by QPT would prolong a situation of breach of the collective agreement that was damaging for both the union and its members. The union asked that QPT's application for an interim order be dismissed.

[14] QPT's reply related more to the unfair labour practice complaint, which, as indicated above, will be considered by the Board at a later time.

III—Analysis and Decision

[15] Section 19.1 of the *Code* grants the Board authority to make interim orders. It reads as follows:

19.1 The Board may, on application by a trade union, an employer or an affected employee, make any interim order that the Board considers appropriate for the purpose of ensuring the fulfilment of the objectives of this Part.

[16] The Board has not established any definite criteria for considering an application for an interim order. However, it must be very careful in exercising its power to issue such orders (see *Transpro Freight Systems Ltd.*, 2008 CIRB 422). In the instant matter, the Board is not satisfied that it would be appropriate to order the stay of the decision by Arbitrator Serge Brault approving the agreement between the MEA and the union in settlement of grievance no. D-2008-22.

[17] In *Trentway-Wagar Inc.*, 2000 CIRB 57, the Board indicated that the criteria used by the courts often provide a useful guide for analysis; however, the Board must carefully consider what is appropriate in the unique circumstances of each case to ensure the fulfilment of the objectives of the *Code*, in accordance with section 19.1.

[18] Given the principles established in its jurisprudence, the Board must consider the application for a stay of the arbitrator's decision in the context of the labour relations realities in this situation and the objectives of the *Code*, that is, to encourage free collective bargaining, the constructive settlement of disputes, and the maintenance of an environment conducive to sound labour relations (see *Transport Besner Inc.*, 2003 CIRB 231).

[19] The application for an interim order before the Board relates to a complaint in which QPT alleged that the MEA, the employer association, had breached its duty of fair representation when it had entered into an agreement with the union—an agreement subsequently endorsed by Arbitrator Brault. QPT cited several grounds in support of its application for an interim order. In particular, it submitted that Arbitrator Brault's decision had created an ambiguous situation in that QPT was now faced with two possible interpretations of the collective agreement, that is, the interpretation based on Mr. Langlois's affidavit, and that based on Arbitrator Brault's decision. This placed QPT in a position where it could not manage its facilities properly and effectively and respect its obligations under the collective agreement. QPT explained that, among other things, the arbitrator's decision imposed a prohibition against giving instructions to longshoremen, while Mr. Langlois's affidavit made no mention of such a prohibition. QPT submitted that the application of the arbitrator's decision should be stayed until an investigation into the complaint under section 34(6) could be held, and argued that it had the right to know which of the two documents—Mr. Brault's decision or Mr. Langlois's affidavit—was to be followed.

[20] The Board is unable to conclude that the interim stay of the arbitrator's decision would ensure the fulfilment of the objectives of Part I of the *Code*. Arbitrator Brault's decision endorsed an agreement reached between the MEA and the union to resolve a union grievance against QPT. One

of the primary objectives of the *Code* is to foster the constructive settlement of disputes, which is exactly what the MEA and the union achieved in these circumstances. The Board is not inclined to call such an agreement into question without compelling evidence of a breach of the employer association's duty of representation. The Board considers that it must first have enough evidence of a violation of section 34(6) of the *Code* and, as indicated at the beginning of these reasons, it intends to hold a hearing on the merits of the complaint filed under section 34(6) of the *Code*.

[21] Further, section 58 of the *Code* protects arbitral awards and orders by means of a strong privative clause and the Board does not have the power to review arbitral awards (see *Dynamex Inc.*, 2004 CIRB 298). The Board notes that the Superior Court is seized of an application for judicial review of the arbitrator's decision. Although QPT had not asked the Board to review the arbitrator's decision, the Board is of the view that ordering a stay of the decision in the particular circumstances of this case without having the opportunity to consider the merits of the complaint under section 34(6) could compromise the objective of section 58 of the *Code*.

[22] The Board moreover finds the judgment of Mr. Justice Michel Delorme dismissing QPT's application for a stay of Arbitrator Brault's decision compelling. The Superior Court heard the parties' arguments respecting the criteria for obtaining a stay in the courts, that is, colour of law, the existence of serious or irreparable harm, and the balance of convenience. It would be presumptuous, if not outright inappropriate, for the Board to arrive at a different finding from that of Mr. Justice Delorme on these specific criteria on the basis of the parties' arguments.

[23] The Board will hear the parties on the merits of the case in order to determine whether the MEA breached its duty of fair representation under section 34(6) of the *Code*.

[24] In light of the above, the Board finds that the labour relations difficulties that would result from the order sought would outweigh any fulfilment of the *Code*'s objectives. For these reasons, the Board dismisses the application for an interim order.

[25] This is a unanimous decision of the Board.

*Certified Translation
Communications*

Louise Fecteau
Vice-Chairperson

Patrick J. Heinke
Member

Daniel Charbonneau
Member